

§ 584.8

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provided in this regulation, BAQ entitlements have no relationship to Army minimum support requirements.

§ 584.8 Garnishment.

(a) *General.* (1) Pub. L. 93-647 (42 U.S.C. 659) permits garnishment, attachment, or assignment of Federal wages and retirement payments to enforce court-ordered child support and alimony obligations that are in arrears. It includes foreign court orders when—

(i) Required by treaty or international agreement. (A soldier is subject to garnishment for child support issued by the FRG only while physically stationed in Germany.)

(ii) Recognized by a court of competent jurisdiction. Applicable State laws govern legal procedures to be used by complainants. Jurisdictional or procedural challenges to garnishment actions remain the responsibility of individual members.

(2) In the absence of State law more favorable to the soldier, 15 U.S.C. 1673 limits the amount of pay that can be garnished as follows:

(i) Fifty percent of disposable pay when a soldier is supporting a spouse or dependent child who is not the subject of the support order. (See § 584.8(a)(3) for an explanation of disposable pay.)

(ii) Sixty percent of disposable pay when a soldier is not supporting such spouse or dependent child.

(iii) An additional 5 percent in each of the above cases if payments are more than 12 weeks overdue.

(3) The items of pay listed in § 584.8(a)(3)(i) are subject to garnishment except for amounts deducted for the items listed in § 584.8(a)(3)(ii).

(i) Items of pay and bonus subject to garnishment.

(A) Basic pay.

(B) Special pay (including enlistment and reenlistment bonuses).

(C) Incentive pay.

(D) Inactive duty training pay.

(E) Academy officials pay (except personal money allowances).

(F) Accrued leave payments (basic pay portion only).

(G) Retired and retainer pay.

(H) Lump-sum Reserve bonus.

(I) Separation payments (readjustment pay and severance pay).

(ii) Deductions not subject to garnishment.

(A) Federal income tax withholding.

(B) State income tax withholding.

(C) Servicemen's Group Life Insurance.

(D) Social Security taxes (Federal Insurance Contributions Act).

(E) United States Soldier's and Airmen's Home.

(F) Survivor Benefit Plan.

(G) Retired Servicemen's Family Protection Plan.

(H) Indebtedness to the United States and delinquent Federal taxes.

(I) Fines and forfeitures ordered by a court-martial or commander.

(b) *USAFAC procedures.* The USAFAC will process most garnishment orders. Unless the order is contrary to Federal law or the laws of the jurisdiction from which it was issued, the soldier's pay will be garnished per the court order. Garnishment orders will be sent by certified or registered mail to the Commander, USAFAC, ATTN: FINCL-G, Indianapolis, IN 46249-0160. However, all legal process issued by German courts will be processed under DODPM, section 70710, when the soldier is stationed in the FRG. The documents must expressly state they pertain to child support or alimony. Also, the name and social security number (SSN) of the soldier must be included. The submission of a divorce decree or support order alone is not enough, as a garnishment order is required.

§ 584.9 Involuntary allotments.

(a) *General.* Pub. L. 97-248 (42 U.S.C. 665) permits involuntary allotments from pay and allowances of soldiers on active duty as child, or child and spousal, support payments when—

(1) The soldier has failed to make payments under a court order for 2 months or in a total amount equal to or in excess of the support obligations for 2 months.

(2) Failure to make such payments is established by notice from an authorized person to the Commander, USAFAC, ATTN: FINCL-G, Indianapolis, IN 46249-0160. An authorized person is—

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(i) Any agent or attorney of any State having in effect a plan approved under part D of title IV of the Social Security Act (42 U.S.C. 651-664), who has the duty or authority under the plan to seek recovery of any amounts owed as child or child and spousal support (including, when authorized under a State plan, any official of a political subdivision).

(ii) A court or agent of the court that has authority to issue an order against the soldier for the support and maintenance of a child.

(3) Such notice must give the soldier's full name and SSN. Also, it must list the name and address of the person to whom the allotment is payable. The amount of the allotment will be the amount needed to comply with the support order. The allotment may include arrearages as well as amounts for current support if provided for in the support order. A copy of this must be included with the notice. If proper, a statement must be included that the support allotment qualifies for the additional 5 percent in excess of the maximum percentage limitations. These limitations are prescribed in 15 U.S.C. 1673. Also, a copy of the underlying support order must be included with the notice. An allotment under this provision will be adjusted or discontinued only upon notice from an authorized person.

(b) *Procedures.* No action will be taken to set up an allotment until the soldier has the chance to consult a legal assistance attorney. The purpose of the meeting is to discuss the legal and other factors involved with respect to the soldier's support obligation and failure to make payments. If the soldier has not consulted with legal counsel, the allotment will start the first end-of-month payday after 30 days have elapsed since notice was given to the affected soldier.

APPENDIX A TO PART 584—REFERENCE

Section I—Required Publications

AR 340-17
Release of Information and Records from Army Files. (Cited in §584.1(f)(2).)
AR 340-21
The Army Privacy Program. (Cited in §584.1(f)(2).)
AR 600-37

Unfavorable Information. (Cited in §§584.1(d)(5)(viii)(B) and 584.2(1)(5).)

AR 640-3

Identification Cards, Tags, and Badges. (Cited in §§584.2(1)(1)(v) and 584.3(c)(3)(v).)

Misc Pub 13-1

DOD Military Pay and Allowances Entitlements Manual. (Cited In §§584.7a, 584.7(d) and 584.8(b).)

Uniform Code of Military Justice

(Cited In §§584.1(d)(5), 584.2(g)(4)(ii), 584.2(1)(2)(v)(B), and 584.3(b)(1)(ii).)

Section II—Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

AR 11-2

Internal Control Systems

AR 20-1

Inspector General Activities and Procedures

AR 140-1

Mission, Organization, and Training

AR 340-2

Maintenance and Disposition of Records for TOE Units and Certain Other Units of the Army.

AR 340-18

The Army Functional Files System

AR 600-240

Marriage in Oversea Commands

AR 601-280

Army Reenlistment Program

AR 608-3

Naturalization and Citizenship of Military Personnel and Dependents

AR 608-61

Application for Authorization to Marry Outside of the United States

AR 635-100

Officer Personnel (Separations)

AR 635-200

Enlisted Personnel (Separations)

Misc Pub 8-1

Joint Travel Regulations, Volume 1: Members of the Uniformed Services

Section III—Prescribed Forms

DA Form 5459-R

Authorization to Release Information from Army Records on Nonsupport/Child Custody/Paternity Complaints. (Cited in §§584.1(d)(5)(iv)(B), 584.1(f)(1), 584.2(1)(2)(iv), and 584.3(b)(2)(ii).)

DA Form 5460-R

Request for Help in Receiving Support and/or Identification Cards for Family Members. (Cited in §584.2(1).)

Section IV—Referenced Forms

DA Form 2-1

Personnel Qualification Record-Part II

DA Form 2029-R

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Application for Authorization to Marry
Outside of the United States
FS Form 240
Report of Birth Abroad of a Citizen of the
United States
Form N-600
Application for Certificate of Citizenship
PS Form 3811
Return Receipt, Registered, Insured, and
Certified Mail

GLOSSARY

Section I—Abbreviations

ARNGUS
Army National Guard of the United States
BAQ
Basic allowance for quarters
DA
Department of the Army
DOD
Department of Defense
DODPM
Department of Defense Military Pay and
Allowances Entitlements Manual
FAO
Finance and accounting office
FRG
Federal Republic of Germany
HQDA
Headquarters, Department of the Army
ID cards
Identification cards
IG
Inspector general
INS
Immigration and Naturalization Service
RCPAC
U.S. Army Reserve Components Personnel
and Administration Center
SJA
Staff Judge Advocate
SSN
Social Security Number
UCMJ
Uniform Code of Military Justice
USACFSC
U.S. Army Community and Family Sup-
port Center
USAFAC
U.S. Army Finance and Accounting Center
USAR
U.S. Army Reserve
VHA
Variable Housing Allowance

Section II—Terms

Arrearage

The total amount of money a soldier owes a family member for prior months in which the soldier failed to comply with the minimum support requirements of this regulation.

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Basic Allowance for Quarters

An amount of money prescribed and limited by law that a soldier receives to pay for quarters not provided by the Government.

Child Custody Complaint

A written or oral complaint by a family member, or a third party acting on behalf of a family member, that alleges that the soldier is violating a court order granting custody of minor children to someone other than the soldier. It also includes a complaint by a mother of a child born out of wedlock against a soldier father who has abducted or detained the child.

Court Order

As used in this regulation, court order includes all judicial and administrative orders and decrees, permanent and temporary, granting child custody, directing financial support, and executing paternity findings. It also includes any foreign nation court or administrative order recognized by treaty or international agreement. Court orders are presumed valid in the absence of evidence to the contrary.

Family Member

For the purpose of this regulation only, a family member includes—

a. A soldier's present spouse. (A former spouse is not a family member. However, except as otherwise indicated, the term "family member" includes any former spouse for whom the soldier is required by any court order to provide financial support.)

b. A soldier's minor children from present and former marriages, including children legally adopted by the soldier. (A family member does not include the child of a soldier who has been legally adopted by another person.)

c. Minor children born out of wedlock to—
(1) A woman soldier.

(2) A male soldier if evidenced by a decree of paternity identifying the soldier as the father and ordering the soldier to provide support.

d. Any other person (for example, parent, stepchild, etc.) for whom the soldier has an obligation to provide financial support under the law of the domicile of either the soldier or the supported person.

Financial Support Provision

The provision in a court order or separation agreement directing the soldier to provide financial support to a family member on a periodic basis.

Government Family Quarters

Any sleeping accommodations or family-type housing owned or leased by the U.S. Government.

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Gross Pay

For support purposes, gross pay includes basic pay and allowances to include special, incentive, and other pay when received on a monthly basis. Gross pay does not include funds not received on a monthly basis (that is, enlistment and reenlistment bonuses and accrued leave payments). Gross pay does not include wages from off-duty employment.

Legal Assistance Attorney

Army lawyers designated to advise and assist soldiers and their families on family law matters. Such matters include marriage, divorce, adoption, paternity, child custody problems, and support obligations. In the context of this regulation, a legal assistance attorney also includes a lawyer retained by a soldier at his or her own expense.

Minor Children

Unmarried children under 18 years of age who are not on active duty with the Armed Forces.

Nonsupport Complaint

A written or oral complaint by a family member, or a third party acting on behalf of a family member, that alleges one of the following:

- a. Soldier is providing no financial support.
- b. Soldier is providing insufficient financial support.
- c. Soldier is failing to comply with—
 - (1) An oral agreement,
 - (2) A written support agreement, or
 - (3) A court order that sets up a financial support requirement.

Soldier

As used in this regulation, the term soldier includes commissioned officers, warrant officers, and enlisted personnel.

Staff Judge Advocate

The chief legal officer and his or her staff who advise commanders on laws and regulations affecting the command. Includes command judge advocates and post judge advocates, but not legal assistance attorneys or attorneys assigned to the Trial Defense Service.

System of Records

Any record under DA control from which information is retrieved by the name of the individual or by his or her SSN.

Variable Housing Allowance

An amount of money prescribed by law that a soldier receives to defray high housing costs in the continental United States.

Written Support Agreement

Any written agreement between husband and wife in which the amount of periodic financial support to be provided by the soldier spouse has been agreed to by the parties. A written support agreement may be contained in a separation agreement or property settlement agreement. Also, the support agreement may be shown by letters exchanged between the parties in which the amount of support has been agreed to by the parties.

PART 589—COMPLIANCE WITH COURT ORDERS BY PERSONNEL AND COMMAND SPONSORED FAMILY MEMBERS

Sec.

- 589.1 Definitions.
- 589.2 Policy.
- 589.3 Applicability.
- 589.4 General.

AUTHORITY: Public Law 100.456 and 10 U.S.C., 814.

SOURCE: 55 FR 47042, Nov. 8, 1990, unless otherwise noted.

§ 589.1 Definitions.

(a) *Court*. Any judicial body in the United States with jurisdiction to impose criminal sanctions of a DoD member, employee, or family member.

(b) *DoD Employee*. A civilian employed by a DoD Component, including an individual paid from non-appropriated funds, who is a citizen or national of the United States.

(c) *DoD Member*. An individual who is a member of the Armed Forces on active duty and is under the jurisdiction of the Secretary of a Military Department, regardless whether that individual is assigned to duty outside that Military Department.

§ 589.2 Policy.

(a) This part (chapter) implements procedural guidance in Department of Defense Directive 552 5.9, "Compliance of DoD members, employees, and family members outside the United States with court orders." This guidance applies to all soldiers and Department of the Army and Nonappropriated Fund (NAF) civilian employees serving outside the United States, as well as to their command sponsored family members.